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From: Jillian Howell <jillian.howell@ylsclinics.org>
Sent: Monday, October 30, 2017 3:17 PM
To: FOIA HQ
Cc: Patrick Woolsey; Marianne Engelman-Lado
Subject: FOIA Request - Water Quality Monitoring Data and Records, Port Arthur and Beaumont, TX
Attachments: FOIA Request - EPA Water Quality Monitoring Records and Data.pdf

Dear Freedom of Information Officer:

This request is submitted on behalf of Community In-Power and Development Association, Inc. (CIDA) to request public disclosure of all water quality data or records collected by EPA in Port Arthur and Beaumont, Texas between August 24, 2017, and the present (October 30, 2017), and documents concerning the water quality monitoring activities conducted during that period.

Please see the attached PDF for the full request and relevant details, including the precise scope of the request, as well as a fee waiver request and supporting information.

In the event that you have any questions concerning the type of materials we request, or have concerns regarding the scope of the request, please contact Jillian Howell by email at jillian.howell@ylsclinics.org or by phone at 781-307-1524.

Thank you for your assistance in this matter.

Sincerely,

Marianne Engelman-Lado
Jillian Howell
Patrick Woolsey

Yale Law School Environmental Justice Clinic
127 Wall Street
New Haven, CT 06511

October 30, 2017

By e-mail to: hq.foia@epa.gov

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

Re: Freedom of Information Request

Dear Freedom of Information Officer,

This Freedom of Information Act ("FOIA") request is submitted on behalf of Community In-Power and Development Association, Inc. (CIDA) to request public disclosure of all water quality monitoring data and records collected by the Environmental Protection Agency ("EPA") in the cities of Port Arthur, Texas and Beaumont, Texas between August 24, 2017, and the present (October 30, 2017), and documents concerning water quality monitoring activities conducted during that period.

Pursuant to FOIA, 5 U.S.C. § 552, the CIDA respectfully requests the following records:

1. Any and all municipal drinking water quality data, for any pollutant, collected or obtained by EPA in Port Arthur, Texas, between August 24, 2017, and the present.
2. Any and all records in EPA's possession concerning the timing and location of any municipal drinking water quality monitoring activities conducted in Port Arthur, Texas between August 24, 2017, and the present.
3. Any and all municipal drinking water quality data, for any pollutant, collected or obtained by EPA in Beaumont, Texas between August 24th, 2017, and the present.
4. Any and all records in EPA's possession concerning the timing and location of any municipal drinking water quality monitoring activities conducted in Beaumont, Texas between August 24, 2017, and the present.
5. Any and all floodwater sampling data, including, but not limited to, floodwater sampling conducting in the vicinity of industrial facilities, hazardous waste sites, and wastewater treatment facilities, for any pollutant, collected or obtained by EPA in Port Arthur, Texas between August 24, 2017, and the present.
6. Any and all records in EPA's possession concerning the timing and location of any floodwater sampling activities conducted in Port Arthur, Texas between August 24, 2017, and the present.

7. Any and all floodwater sampling data, including, but not limited to, floodwater sampling conducting in the vicinity of industrial facilities, hazardous waste sites, and wastewater treatment facilities, for any pollutant, collected or obtained by EPA in Beaumont, Texas between August 24, 2017, and the present.
8. Any and all records in EPA's possession concerning the timing and location of any floodwater sampling activities conducted in Beaumont, Texas between August 24, 2017, and the present.
9. Any and all in records in EPA's possession concerning the shutdown of the Beaumont municipal drinking water supply system, the restarting of the Beaumont municipal water supply system, the lifting of the boil water notice for Beaumont municipal drinking water, and the safety of the Beaumont municipal drinking water supply, between August 24, 2017, and the present.

CIDA is a nonprofit 501(c)(3) environmental justice advocacy organization based in Port Arthur, Texas. CIDA's mission is to empower residents in underserved, low-income communities on the Texas Gulf Coast that are affected by industrial pollution, and to protect the fundamental right of people in those communities to clean air and clean water. CIDA educates local residents on how to take action to reduce pollution in their communities, and organizes community members to promote healthy, safe and economically thriving neighborhoods.

For the purposes of this request, "water quality data" includes, but is not limited to, any water sample collected for any pollutant by EPA or submitted to EPA via any means, including raw data as well as agency compilations or distillations of data into tables, spreadsheets, databases, reports, or summaries.

For the purposes of this request, the term "records" includes, but is not limited to, information of any kind and stored in any manner in the possession of the EPA. This includes writings, letters, memoranda, correspondence, notes, applications, completed forms, studies, reports, reviews, guidance documents, policies, telephone conversations, telefaxes, e-mails, documents, databases, drawings, graphs, charts, photographs, presentations, minutes of meetings, electronic and magnetic records of meetings, and any other compilation of data from which information can be obtained. Without limitation, the records requested include records at any stage of development, whether proposed, draft, pending, interim, final, or otherwise.

Should any of the abovementioned requested data or records already be publicly available, we request that EPA direct us to where we can find the data and records.

To the extent that this request encompasses any documents which contain confidential information, we request that EPA redact portions of the requested documents that are deemed confidential, then disclose redacted documents to the fullest extent possible.

FEE WAIVER REQUEST

CIDA meets the requirements for a fee waiver for this FOIA request and request a waiver of fees in connection with this request. In the event that EPA does not waive fees, we ask EPA to notify us of the basis for your decision and to provide an estimate of costs. Please do not move forward with actions that would require expenditures until the requesting organizations have the opportunity to consider an appeal and the estimate of costs.

Particularly, “disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interests of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(1)(1). EPA considers six factors when determining whether to waive fees for a FOIA request. 40 C.F.R. § 2.107(1)(2)(i). As demonstrated below, each of the six factors weighs in favor of granting a fee waiver.

Factor 1: The Requested Records Concern the Operations or Activities of the Federal Government.

The requested records concern the water quality sampling activities conducted by or reported to EPA during, and immediately after Hurricane Harvey. These activities include sampling programs and results, as well as the decision-making processes regarding timing, location, and choice of analyses. EPA states on its Hurricane Harvey response website that EPA, in coordination with the Texas Commission on Environmental Quality (“TCEQ”), continues to coordinate with local, state and federal officials to address the human health and environmental impacts of Hurricane Harvey and its aftermath, especially as they relate to the water systems in the affected areas. These records unquestionably “concern identifiable operations or activities of the Federal government.” *Id.* § 2.107(1)(2)(i).

Factor 2: Disclosure of the Requested Records Is Likely To Contribute to the Public Understanding of Government Operations or Activities.

This request for water quality data as well as all records related to the decision-making process of when, where, and how water quality monitoring was to be conducted in Port Arthur and Beaumont “is likely to contribute” to an understanding of water quality monitoring efforts completed by or reported to EPA in response to Hurricane Harvey. Information regarding operations or activities completed by or reported to EPA is not currently available to the public.

The waiver of fees for CIDA is in the public interest because release of the requested documents will inform the public about the health and safety of drinking water quality and floodwater conditions in Beaumont and Port Arthur resulting from Hurricane Harvey. The risks to public health and safety posed by drinking water contamination from sewage, oil spills, chemical spills from industrial facilities, and other sources of flood-borne contamination in Port Arthur and

Beaumont after Hurricane Harvey are subject of considerable public interest and concern.¹ The public does not currently possess comprehensive information regarding water quality data and water quality monitoring activities carried out in response to Hurricane Harvey.

According to the most recent October 6, 2017, update from EPA concerning Hurricane Harvey response efforts, TCEQ is aware that releases of wastewater from sanitary sewers occurred as a result of the historic flooding and TCEQ is actively working to monitor facilities that have reported spills. EPA also stated that water quality sampling was to be focused on industrial facilities and hazardous waste sites and that floodwaters may contain bacteria and other contaminants.² Data from these sampling efforts, as well as details regarding timing, location, and contaminants of concern of the sampling effort have not been made publicly available.

Beaumont's municipal water system failed during Hurricane Harvey due to flooding of the city's pumping stations, leaving residents without running water.³ TCEQ required the city to impose a boil water notice on September 1, 2017, due to the likelihood of water contamination by bacteria from sewage and other pollutants borne by floodwaters.⁴ Beaumont's boil water notice was lifted on September 9, 2017, after TCEQ completed water quality testing.⁵ The city posted a notice summarizing the tests conducted by TCEQ but did not include the actual laboratory results.⁶ All of the 36 bacteriological samples were reported to be "clean," and tests were conducted for residuals and Combined Filter Effluent. The publicly reported data did not include analysis for other contaminants, such as metals or other toxins that may have been present in flood waters. While Beaumont announced that the water was again safe to drink, the actual sample data has not been released that formed the basis for this statement.

¹ Michael Sheetz, *118,000 People and No Drinking Water: Flooded Beaumont Cannot Determine When It Will Restore Water Supply*, CNBC NEWS (Aug. 31st, 2017), <https://www.cnbc.com/2017/08/31/118000-people-and-no-drinking-water-flooded-beaumont-cannot-determine-when-it-will-restore-water-supply.html>; *New Worries About Storm Damage as Beaumont's Drinking Water Shuts Off*, N.Y. TIMES (Aug. 31st, 2017), <https://www.nytimes.com/2017/08/31/us/harvey-houston-texas-flood.html>; John Yang, *Beaumont's Running Water Starts to Flow but Hard-hit Texas City May Feel Harvey Effects 'for years to come'*, PBS NEWSHOUR (Sept. 4, 2017), <http://www.pbs.org/newshour/bb/beaumonts-running-water-starts-flow-hard-hit-texas-city-may-feel-harvey-effects-years-come/>; Elliott McLaughlin, *In Beaumont, Water Receding, but not a Drop to Drink*, CNN (Sept. 6, 2017), <http://www.cnn.com/2017/09/06/us/beaumont-without-water-boil-advisory/index.html>

² https://response.epa.gov/site/site_profile.aspx?site_id=12353

³ Michael Sheetz, *118,000 People and No Drinking Water: Flooded Beaumont Cannot Determine When It Will Restore Water Supply*, CNBC NEWS (Aug. 31st, 2017), <https://www.cnbc.com/2017/08/31/118000-people-and-no-drinking-water-flooded-beaumont-cannot-determine-when-it-will-restore-water-supply.html>

⁴ City of Beaumont, Texas, *Public Information: Boil Water Notice to Rescind* (Sept. 9, 2017), <http://beaumonttexas.gov/public-information-boil-water-notice-rescind/>

⁵ *Id.*, Morgan Gstalter & Dan Wallach, *Update: Beaumont Water Pump Station Back On, Boil Water Notice Lifted*, BEAUMONT ENTERPRISE (Sept. 9, 2017), <http://www.beaumontenterprise.com/news/weather/article/Update-Beaumont-water-pump-station-back-on-boil-12180012.php>

⁶ City of Beaumont BWN Rescind Summary (9/6/2017 to 9/8/2017), <https://drive.google.com/file/d/0Bw8nEBgWyMmRSFFGZVRqMDdDM2c/view>
Beaumont Lifts Boil Water Notice, ABC 12 NEWS (Sept. 11, 2017), <http://www.12newsnow.com/weather/harvey/water-safe-to-drink-beaumont-lifts-boil-water-notice/472694794>

Although Port Arthur's municipal water system did not shut down, large areas of the city were flooded during Hurricane Harvey. The U.S. Coast Guard National Response Database indicates that flooding led to spill events at a number of oil refineries, chemical plants, and industrial facilities in Port Arthur.⁷ It is therefore likely that areas of the city were affected by contaminated floodwaters, and it is possible that sewage or other flood-borne pollutants may have contaminated the city's drinking water as well.

Sampling organized by the New York Times found that standing floodwaters within homes in and around Houston contained bacteria and toxins, including *E. coli*, at levels 135 times those considered safe, and elevated levels of lead, arsenic and other heavy metals were present in sediment deposited.⁸ The Associated Press and CNN reported high levels of *E. coli* and total coliform from various locations within Houston.⁹ Government officials and scientists reported that they are still trying to get a handle on the exact nature of the contamination within the standing floodwaters, however, they do know that there is a mix of bacteria, viruses, metals and other potentially toxic pollutants present in waters that have leached from refineries, chemical plants, septic tanks, and Superfund sites.¹⁰ Port Arthur and Beaumont-specific data on floodwater contamination is not available, however the concerns of contamination and the resulting public health risks facing Houston residents are a concern for those living in Port Arthur and Beaumont given the extensive flooding and presence of refineries and chemical plants in these cities.

Factor 3: Disclosure of the Requested Records Will Contribute to the Understanding of a Broad Audience.

Disclosure will "contribute to the understanding" of a broad audience interested in water quality monitoring activities completed by or reported to EPA that were conducted of municipal drinking water and floodwaters in their communities. In light of limited data disclosure, reports of contaminated floodwaters, and drinking water and sewage system failures, CIDA and members of the public are reasonably concerned about municipal water quality in Port Arthur and Beaumont in the days after Hurricane Harvey. Beaumont residents interviewed on October 10, 2017, said that despite the lifting of the boil water notice, they remain skeptical that city tap water is safe to drink in the wake of storm-related contamination and are drinking bottled water instead. This skepticism is understandable, in light of the fact that TCEQ investigated the Beaumont water system in January 2017 for alleged violations involving failure to maintain an "optimal ratio of chlorine" in city drinking water and failure to issue a boil water notice when required.¹¹

CIDA has the capacity and intention to disseminate the water quality information directly to the public, to its members and partner organizations, many of whom work on pollution issues in

⁷ USCG National Response Database Spill/Emissions Events (8/24/17 to 9/12/17), <http://www.nrc.uscg.mil/>

⁸ <https://www.nytimes.com/2017/09/11/health/houston-flood-contamination.html>

⁹ <http://www.cnn.com/2017/09/01/health/houston-flood-water-contamination/index.html>

¹⁰ <https://www.texastribune.org/2017/09/08/post-harvey-houston-extent-water-contamination-unknown/>

¹¹ Juan Rodriguez, *Beaumont Water Under Investigation by TCEQ for Alleged Violations*, ABC 12 NEWS (Jan. 27, 2017), <http://www.12newsnow.com/news/local/beatmont-water-under-investigation-by-tcba-for-alleged-violations/393090132>

Texas, to policymakers at varying levels of government, and to members of the news media. CIDA has extensive communications capabilities, and a proven history of dissemination of information in the public interest via a variety of means. CIDA has over 250 members, and is part of a large network of affiliated environmental justice organizations throughout the state of Texas and the country. CIDA Director Hilton Kelly has testified before the United States Senate, has been interviewed in print publications, and has made television and radio appearances to publicize environmental justice issues. CIDA can use all of these means to inform the public about the safety of drinking water and floodwaters in Port Arthur and Beaumont. Through these varied mechanisms, the requesters intend to convey the requested information to the public to improve public understanding of how EPA determined that drinking water and floodwaters have been properly monitored and there are no risks to community members.

Factor 4: The Public's Understanding of Government Operations Will Be Significantly Enhanced by Disclosure of the Requested Information.

Disclosure of the requested records will "contribute significantly to public understanding" of the water quality monitoring program conducted by EPA and other water quality monitoring conducted and reported to EPA, standard procedures, and results. It will supply critically important information that is not currently available to the public. Limited information beyond general updates on EPA's Hurricane Harvey response website have been disclosed regarding water quality monitoring efforts and no water quality data has been released by EPA. According to the most recent October 6, 2017, Hurricane Harvey response update regarding drinking water, about 2,238 drinking water systems have been affected by Harvey and of those 2,238 systems, 2,196 are fully operational, 39 have boil-water notices, and two are shut down. EPA stated that TCEQ is contacting remaining systems to gather updated information on their status and assistance teams are working in the field directly with system operators to get systems operational.

The requested data will inform the public about the health and safety of water quality conditions in Port Arthur and Beaumont during this period. Providing immediate public access to this information will improve transparency and accountability concerning water quality in these cities. The timely release of water quality data, without further delay, will serve the public interest by providing concerned residents with a fuller picture of the extent of any threats to their health and safety that resulted from Hurricane Harvey. Further, full disclosure of the data related to environmental impacts from Hurricane Harvey will inform ongoing decisions about long-term hurricane response, funding, and recovery actions.

Factor 5: The Requesters Have No Commercial Interest in the Requested Disclosure of Information.

CIDA is a nonprofit organization that has no "commercial interest that would be furthered by the requested disclosure." 40 C.F.R. § 2.107(1)(3)(i).

Factor 6: The Requesters' Sole Interest in Disclosure Is To Promote the Public Interest.

The sole interest of the CIDA in obtaining the requested records is to inform the public about the health and safety of their drinking water and exposure to floodwaters in Beaumont and Port Arthur during this period. Since CIDA have no commercial interest in the requested records, the request is not "primarily in the commercial interest of the requester." *Id.* § 2.107(1)(3)(ii).

In sum, this request meets all of the six factors for a fee waiver. In the event that EPA does not waive fees, we ask EPA *not* to move forward with providing the information requested by the FOIA, notify us of the basis for your decision, and provide an estimate of costs.

INSTRUCTIONS FOR RECORD DELIVERY

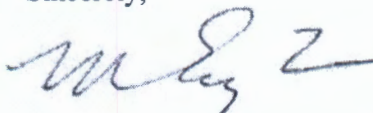
Please send records to Marianne Engelman-Lado and Jillian Howell at marianne.engelman-lado@ylsclinics.org and jillian.howell@ylsclinics.org or mail them to:

Yale Law School Environmental Justice Clinic
c/o Marianne Engelman-Lado and Jillian Howell
127 Wall Street
New Haven, CT 06511

In the event that you have any questions concerning the type of materials we request, or have concerns regarding the scope of the request, please contact Jillian Howell by e-mail at jillian.howell@ylsclinics.org or by telephone at (781) 307-1524.

Thank you for your assistance in this matter.

Sincerely,



Marianne Engelman-Lado

Jillian Howell
Patrick Woolsey

Yale Law School Environmental Justice Clinic
127 Wall Street
New Haven, CT 06511

Submitted on behalf of:

Hilton Kelley
Community In-Power and Development
Association, Inc.